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AUSTIN 11, TEXAS

Hon. J. S. Marchison
Executive Director
State Department of
Public Welfare
Austin, Texas

Opinion No. 0-5064

Re: Deduction from benefit payments
by the Texas Unemployment Compensation
Commission of amounts payable
for public assistance

Dear Mr. Marchison:

We have received and carefully considered your opinion request of January 25, 1943. Your letter, which contains the question asked as well as your views on the subject, is set out in full as follows:

"Does the public assistance administered by the State Department of Public Welfare come within the scope of the disqualifications set forth in Texas Unemployment Compensation Law in Vernon's Annotated Texas Statutes, Vol. 15 Pocket Part, Chap. 14, Title 83, Article 5221B-3, Section e, Subsection 3?"

"The Texas Unemployment Compensation Commission has been deducting from the benefit amounts due claimants for unemployment compensation the amount they are reported to have received from the Texas Department of Public Welfare for public assistance. It is the opinion of the Texas Unemployment Compensation Commission that public assistance comes within the scope of the disqualifications set forth in the Texas Unemployment Compensation Law in Vernon's Annotated Texas Statutes, Vol. 15, Pocket Part, Chap. 14, Title 83, Article 5221B-3, Section e, Subsection 3.

"The Texas Unemployment Compensation Law provides in Article 5221B-3 Section 3, Subsection 3, that a claimant shall be disqualified from receiving unemployment benefits for any benefit period with respect to which he has received:

"'Old Age Benefits under Title II of the Social Security Act as amended, or similar payments under any act of Congress, or of said Legislature, or Employment Pension Plan, provided, that if such remuneration is less than the benefits which would otherwise be due under this act, he shall be entitled to receive for such benefit period, if otherwise eligible, benefits reduced by the amount of such remuneration.' (Underline ours)

"The Texas Unemployment Compensation Commission assumes, then, that payments for Old Age Assistance are similar to Old Age Benefits under Title II of the Social Security Act as Amended.

"Public Assistance received from the Texas Department of Public Welfare is given the individuals in need; Old Age and Survivors' Insurance, on the other hand, is the right of every individual who has met certain requirements with respect to length of service and wages earned under covered employment. Old Age Insurance differs further in the requirement that workers contribute to the program; public assistance is financed by other means of taxation. It seems to us, then, that benefits under the Railroad Retirement Act and under the United States Civil Service Retirement Act are similar to Old Age Benefits under Title II of the Social Security Act as Amended, but that public assistance differs fundamentally both in purpose and in method of accomplishment.

"By examining the Texas Public Welfare Act of 1941, House Bill 611, Acts of the 47th Legislature, Regular Session, Sections 12, 17, and 20, one will find that the Department of Public Welfare gives financial aid only to needy persons who meet certain stated requirements. An individual does not qualify if he possesses real or personal property in excess of stated amount or income to provide a reasonable subsistence compatible with health and decency. This Act also provides that assistance covered by its provisions shall not be construed as a vested right in the recipient of such assistance.

"SEC. 29. Old Age Assistance, aid to the blind or aid to dependent children as provided for under the provisions of this Act shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under the provisions of this Act shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any insolvency law; the provision of this Act providing for old age assistance, aid to the blind, and aid to dependent children shall not be construed as a vested right in the recipient of such assistance. (Underscore ours)

"It seems clear that public assistance administered by the Texas Department of Public Welfare differs basically from Old Age and Survivors' Insurance Title II of the Social Security Act.

"A search of the Texas statute discloses, it seems to us, at least one type of payment similar to Old Age

Benefits under Title II of the Social Security Act as Amended, that is, benefits under the 'State Teachers' Retirement Program' (Chap. 471 1937). Payments under this act are made without regard to need. They are based upon length of service and financed in part by employee contributions.

"It would seem feasible that the words 'or of a State Legislature' may have been added to Article 5221b-3, Section e, Subsection 3 of the Texas Unemployment Compensation Law in order to disqualify claimants receiving benefits to the Teachers' Retirement Program.

"We are of the opinion that a claimant should first receive that to which he is entitled by reason of his employment as a matter of right before he is paid that which he is granted because of need.

"Since the Public Welfare Act implies that deduction of unemployment compensation benefits should be made, it would seem to be in accord with the intent of the Legislature for the Texas Unemployment Compensation Commission to assume that a deduction has been or will be made by the State Department of Public Welfare.

"If the State Department of Public Welfare makes such deduction and then the Unemployment Compensation Commission deducts Old Age Assistance from unemployment payments, a double deduction will be made.

"Your consideration and advice on this question will be appreciated."

We agree with the conclusion you reach inasmuch as a consideration of Title II of the Social Security Act, as well as similar Acts of Congress and our State Legislature, shows that payments made under such Acts are paid to the claimant as a matter of legal right. Had it been the intent of the Legislature to include the assistance received under the provisions of the Texas Public Welfare Act as a disqualification to receive benefits, or reduce benefit payments, under the terms of Article 5221b, V.A.C.S., we believe that a reference to Title I of the Social Security Act would have been incorporated in Section 3(e) (3). Title I of the Social Security Act sets up a plan for Old Age Assistance payments to "needy-aged" individuals.

You are therefore advised that the amount of money paid to an individual under the provisions of the Texas Public Welfare Act should not be deducted from benefits to be paid under the terms of Article 5221b, V.A.C.S.

Hon. J. S. Murchison, page 4

The views expressed in this opinion are not in conflict with our former opinion No. O-4393, which held that the payment of Federal War Displacement Benefits would preclude the payment of the regular Unemployment Compensation Benefits under the Texas law other than in the reduced amount provided in Article 5221b-3 (e) (3).

The Texas Unemployment Compensation Commission may have misinterpreted our Opinion No. O-4393 by the author's inadvertent omission of the qualifying words "under Title II of the Social Security Act, as amended" after the words "old age benefits" in the first unquoted paragraph on page 5 of the opinion. The term "old age benefits", as used in said opinion, might be construed as including both old age assistance provided for by Title I of the Social Security Act, based upon need and to which the beneficiary can acquire no vested right, as well as "Old Age Benefits" provided for by Title II of the Social Security Act, as amended, to which the qualified beneficiary is entitled as a matter of right. Such was not the construction intended by the use of the words "old age benefits" in said opinion.

This opinion is limited strictly to the facts before us and is not intended as an attempt to define the words "... all similar payments under any Act of Congress, or a State Legislature, . . .".

APPROVED APR 5, 1943
/s/ Grover Sellers
FIRST ASSISTANT ATTORNEY
GENERAL

APPROVED: OPINION COMMITTEE
BY: BMB, CHAIRMAN

Yours very truly

ATTORNEY GENERAL OF TEXAS

By /s/ Woodrow Edwards
Woodrow Edwards, Assistant

This opinion considered and approved in limited conference.

WE:AM:WB